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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,644	12/29/2003	Guy Pardon	FREL P-048-DV-P1801US/DIV	1643
68392	7590	11/17/2010		
Oppedahl Patent Law Firm LLC - Frei P O Box 5940 Dillon, CO 80435-5940			EXAMINER LOVEL, KIMBERLY M	
			ART UNIT	PAPER NUMBER
			2167	
			NOTIFICATION DATE	DELIVERY MODE
			11/17/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket-oppedahl@oppedahl.com

Office Action Summary	Application No.	Applicant(s)	
	10/707,644	PARDON ET AL.	
	Examiner	Art Unit	
	KIMBERLY LOVEL	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13, 15, 16, 18, 20 and 23-37 is/are pending in the application.
- 4a) Of the above claim(s) 6-13, 15, 16, 18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This communication is in response to the Amendment filed 17 August 2010.
2. In the Amendment filed 17 August 2010, claims 6-13, 15, 16, 18, 20 and 23-27 are pending of which claims 6-13, 15, 16, 18 and 20 are withdrawn from consideration and claims 1-5, 14, 17, 19, 21 and 22 are cancelled. This action is made Non-Final.
3. The previously presented prior art rejections have been withdrawn.

Election/Restrictions

4. It is requested that the claims directed towards inventions non-elected be cancelled in order to provide for compact prosecution.

Claim Objections

5. Claim 23 is objected to because of the following informalities:

Line 3 recites "one or more operations that **can be** invoked." The phrase "can be" is not considered to carry patentable weight since just because some can happen does not mean that any functionality is actually invoked. Therefore, it is requested that "can be" be changed to "are."

Line 13 recites "wherein such an operation-level." It is suggested that the term "such" be deleted in order to provide conciseness within the claim limitation,

Appropriate correction is required.

Claim Clarifications - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. **Claims 23-37** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. **Claim 23** is directed towards a system. However, it is noted that the use of the word "system" does not inherently mean that the claim is directed towards a machine or article of manufacture. The system which is referred to as a transactional service which is executed on a local server comprises of operations and invocations. Therefore, the system is interpreted as comprising entirely of software per se according to one of ordinary skill in the art. Therefore, the claim language fails to provide the necessary hardware required for the claim to fall within the statutory category of an apparatus.

According to MPEP 2106:

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Since **claims 24-37** are dependent on claim 24 and fail to overcome the deficiencies of claim 24, the claims are rejected on the same grounds as claim 24.

A possible amendment to overcome the 35 USC 101 rejection is suggested below.

23. (Currently amended) A computerized data management system, ~~referred to as~~
~~transactional service,~~ comprising:

a local server; and

a wherein the transactional service is executed on a the local server, wherein the transactional service comprises comprising:

Reasons for Allowance

9. The following is a statement of reasons for the indication of allowable subject matter:

In the Examiner's Non-Final Office Action dated 18 March 2010, claims 23-37 were rejected under 35 USC 103 based primarily on US Patent No 7,290,056 to McLaughlin et al and US Patent No 6,233,585 to Gupta et al.

The claimed invention is directed towards transactional processing.

The prior art of record, McLaughlin and Gupta, do not show, teach or suggest the features of, an invocation of the service, by a remote client, of an operation leading to a new transaction different from, but possibly related to, any existing client transaction, **wherein such an operation-level transaction is committed before the client transaction context is terminated before globalCommit notification; the transactional service locally, on the local server, maintaining an undo operation for such a committed operation; and a failing or failed remote client transaction context leading to the execution of the locally maintained undo operations of the corresponding committed invocations in the transactional service combination with the other claimed features.**

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10. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

11. Applicant's arguments filed with respect to the prior art rejections of the claims have been fully considered. The 35 USC 103 rejections of claims have been withdrawn.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KIMBERLY LOVEL whose telephone number is (571)272-2750. The examiner can normally be reached on 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly Lovel/
Examiner
Art Unit 2167

/Kimberly Lovel/
Examiner, Art Unit 2167

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